



May 1, 2013

The Michigan Senate  
Committee on Natural Resources, Environment and Great Lakes

RE: Senate Bill 163 and the Michigan Wetland Protection Program

Dear Senators:

On behalf of over 2,500 individual and business members, Tip of the Mitt Watershed Council thanks you for the opportunity to submit the following information regarding Senate Bill 163. We are aware that the hearing today may also address a substitute bill that we have not yet seen, as of this writing. However, given the interest in the Michigan Wetland Protection Program, we appreciate the opportunity to comment on the future of the program, even if the substitute is not yet ready.

Michigan has a proud tradition of being one of only two states to administer Section 404 of the Clean Water Act (CWA). To keep the authority to so, the state must maintain a program that is equivalent to the federal program administered by the U.S. Environmental Protection Agency (EPA).

The EPA conducted a comprehensive audit of Michigan's CWA Section 404 permitting program. This included a review of the state's statutory and regulatory provisions governing the program, as well as its administration of the program. During that review, EPA found deficiencies in the legal authorities establishing the approved program, and in the program's administration. These deficiencies are identified in the Final Report from the EPA.

Included in the EPA Final Report are also corrective actions needed to address the deficiencies. Some of the provisions included in Senate Bill 163 directly correlate to corrective actions required by EPA and recommended by the Wetland Advisory Council. We fully support making necessary corrective actions that will ensure Michigan can maintain assumption of the 404 program.

Over the past few years, we served on the Wetland Advisory Council and chaired a subcommittee devoted to satisfying the EPA Audit requirements. We also participated in the legislative conversations in 2009 that created the Council and kept the program here, for the time being. With our experience in mind, we offer the following points.

First, broadening state exemptions beyond the specifications of federal exemptions would reduce the current equivalency standards, therefore, putting the state's assumption in jeopardy. We have communicated our concerns about this to the DEQ, in addition to the utility sector, drain commissioners, and the Farm Bureau, among others. Please do not allow exemptions that will jeopardize our federal program assumption in any bill substitute.

Second, we support creation of wetland mitigation banks as an important tool that can protect wetlands while also making economic development possible. We understand that this can happen without a mitigation bank, as well; but if used wisely, a bank could be an additional asset for the state. However, the devil is in the details, and mitigation banking is fraught with challenges.

Wetlands are valuable to water quality but vanishing fast. We must focus, first and foremost, on avoidance and minimization of impacts to them. We are willing to work on better implementation measures for proposals that cannot avoid or minimize, such as building a good mitigation bank, but we must ensure that the intent of wetland mitigation is served by any changes made to the program.

One thing that must be available is the ability to mitigate the loss of wetland functions and values in impacted proposal sites with the restoration or protection of functions and values in another location. That location must benefit the area lost by nature of being located in the same ecoregion. Ecoregion boundaries are determined by examining patterns of vegetation, animal life, geology, soils, water quality, climate, and human land use, as well as other ecosystem components.

Finally, we are concerned about the long-term stability of the program, so we are naturally worried about funding. This bill requires more work by DEQ and yet, we are not increasing funding to the Department to accomplish this additional work. Any improvements made on programmatic efficiencies, or on correcting the EPA audit deficiencies will not be effective, if the program is continuously underfunded or in question. We urge you to support a bill that also provides a stable source of funding for this important program.

Thank you for the opportunity to provide these comments. Please feel free contact me with questions or concerns: 231.347.1181 ext. 118 or [grenetta@watershedcouncil.org](mailto:grenetta@watershedcouncil.org).

Sincerely,



Grenetta Thomassey, PhD  
Tip of the Mitt Watershed Council